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## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

#### **Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended**

**AGENCY:** Office of the Secretary, Department of Homeland Security.

**ACTION:** Notice of determination.

**SUMMARY:** The Acting Secretary of Homeland Security has determined, pursuant to law, that it is necessary to waive certain laws, regulations, and other legal requirements in order to ensure the expeditious construction of barriers and roads in the vicinity of the international land border in Imperial County, California.

**DATES:** This determination takes effect on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**SUPPLEMENTARY INFORMATION:** Important mission requirements of the Department of Homeland Security (“DHS”) include border security and the detection and prevention of illegal entry into the United States. Border security is critical to the nation’s national security.

Recognizing the critical importance of border security, Congress has mandated DHS to achieve and maintain operational control of the international land border. Secure Fence Act of 2006, Public Law 109-367, sec. 2, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. 1701 note). Congress defined “operational control” as the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband. *Id.* Consistent with that mandate from Congress, the President’s Executive Order on Border Security and Immigration Enforcement Improvements directed executive departments and agencies to deploy all lawful means to secure the southern border. Executive Order 13767, sec. 1. In order to achieve that end, the President directed, among other things, that I take immediate steps to prevent all unlawful entries into the United States, including the

immediate construction of physical infrastructure to prevent illegal entry. Executive Order 13767, sec. 4(a).

Congress has provided to the Secretary of Homeland Security a number of authorities necessary to carry out DHS's border security mission. One of those authorities is found at section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended ("IIRIRA"). Public Law 104-208, Div. C, 110 Stat. 3009-546, 3009-554 (Sept. 30, 1996) (8 U.S.C. 1103 note), as amended by the REAL ID Act of 2005, Public Law 109-13, Div. B, 119 Stat. 231, 302, 306 (May 11, 2005) (8 U.S.C. 1103 note), as amended by the Secure Fence Act of 2006, Public Law 109-367, sec. 3, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. 1103 note), as amended by the Department of Homeland Security Appropriations Act, 2008, Public Law 110-161, Div. E, Title V, sec. 564, 121 Stat. 2090 (Dec. 26, 2007). In section 102(a) of IIRIRA, Congress provided that the Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. In section 102(b) of IIRIRA, Congress mandated the installation of additional fencing, barriers, roads, lighting, cameras, and sensors on the southwest border. Finally, in section 102(c) of IIRIRA, Congress granted to the Secretary of Homeland Security the authority to waive all legal requirements that I, in my sole discretion, determine necessary to ensure the expeditious construction of barriers and roads authorized by section 102 of IIRIRA.

## **DETERMINATION AND WAIVER:**

### **Section 1**

The United States Border Patrol's El Centro Sector is an area of high illegal entry. In fiscal year 2020, the United States Border Patrol ("Border Patrol") apprehended over 11,000 illegal aliens attempting to enter the United States between border crossings in the El Centro Sector. In that same time period, between border crossings in the El Centro Sector the Border

Patrol seized over 200 pounds of marijuana, over 50 pounds of cocaine, over 30 pounds of heroin, over 3,100 pounds of methamphetamine, and over 60 pounds of fentanyl.

Due to the high levels of illegal entry within the El Centro Sector, I must use my authority under section 102 of IIRIRA to install additional physical barriers and roads in the El Centro Sector. Therefore, DHS will take immediate action to construct primary and secondary barriers in the El Centro Sector. The areas in the vicinity of the border within which such construction will occur are referred to herein as the “project areas” and are more specifically described in Section 2 below.

## **Section 2**

I determine that the following areas in the vicinity of the United States border, located in the State of California in the Border Patrol’s El Centro Sector are areas of high illegal entry (the “project areas”) –

- Starting one-half (0.5) of a mile west of the San Diego County – Imperial County line and extending east to approximately one mile east of Border Monument 210

There is presently an acute and immediate need to construct physical barriers and roads in the vicinity of the border of the United States in order to prevent unlawful entries into the United States in the project areas pursuant to sections 102(a) and 102(b) of IIRIRA. In order to ensure the expeditious construction of the barriers and roads in the project areas, I have determined that it is necessary that I exercise the authority that is vested in me by section 102(c) of IIRIRA.

Accordingly, pursuant to section 102(c) of IIRIRA, I hereby waive in their entirety, with respect to all contracting actions associated with the construction of physical barriers and roads (including, but not limited to, accessing the project areas, creating and using staging areas, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of physical barriers, roads, supporting elements, drainage, erosion controls, safety features, lighting, cameras, and sensors) in the project areas, all of the following statutes and regulations, including any legal requirements of, deriving from, or related to the subject of, the following statutes and

regulations: 41 U.S.C. 3301; 41 U.S.C. 3302(b)-(e); 41 U.S.C. 3304; 41 U.S.C. 3306(a); 41 U.S.C. 3309(b)-(e); 41 U.S.C. 3502; 41 U.S.C. 4103(c), (d)(3)-(4); 41 U.S.C. 4104(b); 41 U.S.C. 4106(c)-(d); 41 U.S.C. 6101(b)(1); 41 U.S.C. 1126; 41 U.S.C. 1708(a), (c), (e); Section 880 of Division A, Title VIII of Public Law 115-232; 15 U.S.C. 644; 15 U.S.C. 657q; 15 U.S.C. 631(j); 15 U.S.C. 637(d)-(f), and (h); 13 CFR part 125; 48 CFR 22.404-5; 48 CFR 16.504(c); and 48 CFR 16.505(a)(4) and (5), (a)(8)(i) and (iii), (b).

This waiver does not revoke or supersede any other waiver determination made pursuant to section 102(c) of IIRIRA. Such waivers shall remain in full force and effect in accordance with their terms. I reserve the authority to execute further waivers from time to time as I may determine to be necessary under section 102 of IIRIRA.

*Signature*

The Acting Secretary of Homeland Security, Chad F. Wolf, having reviewed and approved this document, is delegating the authority to electronically sign this document to Ian J. Brekke, who is Deputy General Counsel for DHS, for purposes of publication in the *Federal Register*.

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Ian J. Brekke,  
*Deputy General Counsel for DHS.*